IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CIVIL JURISDICTION
FAMILY COURT APPEAL NO.50 OF 2002
IN
M.J. PETITION NO.B-1 OF 2001

Shri Anand Govind Bhide,
Hindu Adult,
Temporarily shifted to
C/o. Dr. Anjali Bhide,
22/3 J.P.M. Society
Mulund (East), Mumbai-81. ... **Appellant (Orig. Deft.)**

Versus

Smt. Rohini Anand Bhide,
Hindu Adult,
B/5, 2nd floor, Shanti Bhuvan Scy.
1261, Sadashiv Peth, Pune. ... **Respondent (Orig. Plff.)**

Shri Anand Bhide, Appellant in person
Shri A.S. Khandeparkar with Smt. Shilpa A. Joshi for Respondent

CORAM : S.B. MHASE, & S.R. SATHE, JJ.
DATED : 02nd AUGUST, 2006

ORAL JUDGEMENT :-

1. Appellant-the original defendant in Marriage Petition No. B-1/2001 has preferred this appeal against the judgement and order passed by the Family Court, Mumbai whereby the suit/ petition filed by the wife against her husband-defendant for mandatory and permanent injunction was decreed in her favour and the

defendant-husband was directed to remove himself alongwith his belongings from the suit premises and permanently restrained from interfering with the plaintiff's occupation and possession of the suit flat. For the sake of convenience hereafter the parties shall be referred to as “Plaintiff-Wife” and “Defendant-Husband”.

2. The brief facts giving rise to this appeal are as under :-

Plaintiff is the second wife of the defendant. Defendant's first marriage had taken place with one Shubhada Datar on 12/02/1966 and out of the said wedlock, the defendant has one daughter by name Anjali. According to defendant, his first wife was suffering from mental disorder and she got herself burnt by pouring kerosene on her person on 18/03/1972. Thereafter, defendant performed second marriage with Rohini Bhide, the present Plaintiff on 18/12/1973. At that time, Plaintiff was issueless divorcee. She was M.A. B-ed. and serving as a teacher at Pune. After marriage, Plaintiff and defendant had their matrimonial home at Goregaon where they were staying with daughter Anju and defendant's mother.

3. At the time of marriage between Plaintiff and defendant, defendant was serving in Reserve Bank of India as Engineer. In August-1974, he was transferred to Delhi. Both Plaintiff and defendant stayed together at Delhi from August-1974 to 24/04/1981. During that period, Plaintiff gave birth to a female child on 09/06/1977 and she was named as Vrinda. According to Plaintiff, in March-1974 or thereabout, Plaintiff was in search of her own accommodation. At that time, she came to know that the suit flat i.e. Flat No.9 situated in Datta Vijay Co-operative Housing Society, Mulund is available, as the person by name Navare who had initially booked the said flat wanted to dispose of the same. The Plaintiff, therefore, decided to purchase the suit flat out of her own savings and with the help of financial assistance from her parents. Accordingly she actually purchased the suit flat on 3.4.1974. At that time, her husband i.e. defendant also gave some money by way of loan which was subsequently repaid to the defendant.

4. Though, the Plaintiff and defendant were residing together initially at Mumbai and thereafter at Delhi and out of the said wedlock the Plaintiff has even given birth to a female child, the relations between them were in fact not cordial.

5. According to Plaintiff, her husband-defendant was miserly and greedy person and was behaving in such a fashion, as a result of which, there was an apprehension in her mind that it may not be possible for her to continue to stay with her husband i.e. defendant. In fact considering this aspect, Plaintiff and her parents were of the view that Plaintiff should have some independent accommodation of her own and it is only for that reason Plaintiff purchased the suit flat.

6. After receiving possession of the suit flat on 15/04/1975 or thereabout, there was thread ceremony of son of defendant's sister and several guests were to attend the ceremony. According to Plaintiff, she therefore permitted defendant's mother to use and occupy the suit flat and went back to Delhi. Even after the time Plaintiff and defendant returned to Mumbai from Delhi they stayed in the suit flat, however,

considering the treatment that was given to her, Plaintiff revoked the permission granted to her husband-defendant to reside in the suit flat and requested him that he should shift to his own flat situated at Goregaon and allow her to stay alone in the suit flat. Defendant got annoyed and he in fact allowed his some other relations also to stay in the suit flat. As Defendant did not withdraw himself from the suit flat, plaintiff filed S.C. Suit No.3378 of 1983 against her husband i.e. defendant in the City Civil Court, Mumbai on 02/06/1983 and prayed for mandatory injunction directing the defendant- husband to withdraw himself from the suit premises alongwith his belongings and also prayed for permanent injunction.

7. The defendant-husband filed his Written Statement and admitted that Plaintiff is his second wife. He also admitted that both of them were residing together at Mumbai in the suit flat and then at Delhi. He, however, contended that the suit flat is not exclusively owned by the Plaintiff. According to him, the cost of the suit flat was 28,000/- and out of that, he paid some of Rs. 11,550/- by cheque to Datta Vijay Co-operative Housing Society and purchased the suit flat in the name of Plaintiff as matrimonial home.

According to him, Plaintiff's father had agreed to make payment of balance amount. The defendant wanted to return the said amount. However, Plaintiff's father by his letter dated 20/10/1977 told the defendant that he should not think of returning the said amount and the amount that has been paid by him was gift from him to defendant. The defendant also contended that since beginning, he was regularly paying the maintenance charges of the said flat as well as the taxes of the same till March 1982 and it was only after the time the Plaintiff informed the Society not to accept charges from defendant, he stopped making payments in that behalf. The defendant further contended that Plaintiff had come from a rich family while he was from middle class family. Plaintiff wanted to live luxurious life and thus there was difference in the attitude and life style of Plaintiff and defendant. According to him, when he came to know that suit flat is available, he made the necessary inquiries and decided to purchase the said flat and accordingly also paid the initial first installments of Rs. 11,550/- by cheque. However for the convenience, the flat was purchased in the name of Plaintiff. The defendant also contended that he is in joint occupation of the suit flat and has contributed Rs. 11,550/- for the purchase of flat and

thus, Plaintiff alone is not the owner of the suit flat. He therefore contended that Plaintiff-wife is not entitled for injunction as prayed.

8. On these pleadings, the learned Judge, City Civil Court, Bombay framed issues. In order to prove her own case, plaintiff examined herself and produced certain documents. As against this, defendant also examined himself and produced certain documents. After considering the evidence of both the parties, the learned trial Judge, decreed the suit in Plaintiff's favour on 28/02/1990.

9. Being aggrieved by the said order, the defendant-husband filed First Appeal No. 377 of 1990. But the same was decided. He, therefore, filed LPA No. 116 of 2000. On 22/11/2000, this Court set aside the order passed by the City Civil Judge in S.C. Suit No. 3378 of 1983 and transferred the said suit to the Family Court, Mumbai for disposal according to law.

10. In pursuance of the said order the suit was transferred to Family Court No.2, Bandra and it was numbered as Petition No.B-1/2001. After hearing the

parties, the learned Judge of the Family Court passed the order that evidence recorded by the Judge, City Civil Court, Bombay be read as evidence in the said petition. Parties were also allowed to lead further evidence. After recording such evidence and hearing the arguments of both the sides, learned Judge, Family Court came to the conclusion that the Suit Flat has been purchased by the Plaintiff-wife and the defendant-husband has no right, title and interest in the same. Husband was permitted to use the said flat for some period but the said permission was also revoked by the Plaintiff-wife and as such defendant had no right to remain in occupation of the suit flat. The learned Judge also observed that defendant-husband had in fact filed Marriage Petition against his wife i.e. Plaintiff in October-1992 in the Family Court, Bandra and decree for diverse was granted in favour of defendant-husband and thus, the marriage between Plaintiff and defendant was dissolved by decree dated 13/12/1996 and the suit flat was not matrimonial home of the Plaintiff and defendant. The learned Trial Judge, therefore, passed decree for mandatory and permanent injunction in favour of the Plaintiff-wife.

11. Being aggrieved by the said judgement and

order, husband i.e. defendant has filed the present appeal. In this appeal before us, the defendant-husband has urged three points. Firstly, he submitted that when the suit No.3378 of 1983 was transferred by the High Court to the Family Court, three directions were given, but the same were not followed by the Family Court. Secondly, the defendant canvassed before us that the learned Judge, Family Court, Bandra has not properly appreciated the evidence on record and has even relied on the evidence which was not admissible for want of pleadings in that behalf. Lastly, he submitted that suit flat was the matrimonial home of Plaintiff and defendant and he had made contribution at the time of purchase of the flat and was in joint occupation of the same on the date of filing of the suit by the Plaintiff. He, therefore, submitted that Plaintiff was not entitled for injunction against him, he being the joint owner of the suit flat. The defendant, therefore, submitted that appeal be allowed and plaintiff's suit for injunction be dismissed. As against this, Shri Khandeparkar, learned Advocate for the Plaintiff-wife supported the judgement and order passed by the learned Trial Judge. He submitted that there are various admissions of the defendant-husband wherein he has clearly stated that the suit flat is of his wife i.e.

Plaintiff and as the marriage is dissolved between Plaintiff and defendant, the defendant is not entitled to reside in the suit house. He, therefore, submitted that the appeal be dismissed. It is not in dispute that Plaintiff is second wife of the defendant. There is also no dispute about the manner in which defendant's first wife died. It is also an admitted fact that relations between Plaintiff and defendant had become strained and Plaintiff had filed in October-1992 Marriage Petition in the Family Court and decree for diverse was passed on 13/12/1996 and the same has become final. Admittedly, on 24/01/2000 as per the order passed in the First Appeal, the defendant-husband handed over the keys of the suit flat to Plaintiff and shifted himself to his married daughter's house and thus as on today, suit flat is in possession of the Plaintiff-wife.

12. At the outset, it must be mentioned that though in this case the pleadings of the parties are lengthy and the evidence is also bulky, the point involved is very short. The suit in question is for mandatory and permanent injunction in respect of the suit flat. Admittedly, the said flat is standing in the name of Plaintiff-wife. However, it is the contention of the

defendant-husband that the said flat is not exclusively owned by the wife but it is owned by both of them jointly and thus, they are the co-owners of the suit flat. So, the point is whether the suit flat is of Plaintiff or defendant ? or of both ? While deciding this question, it is also necessary to find out as to what was the intention of the parties when the said flat was purchased and under what circumstances it was purchased.

13. From the evidence of both the parties and in particular from the letters written by them to each other as well as the letters written by plaintiff and defendant to Plaintiff's father, it is quite evident that though the Plaintiff and defendant lived together for a long time that is at least about 7-8 years and out of the said wedlock they have one daughter by name Vrinda, still then, the relations between them were not cordial. Any person who would go through the correspondence and the allegations made by both the parties against each other would get the impression that behavior and conduct of both the parties was not usual and normal. Each party was calling the other as whimsical and obstinate. Of course, ultimately, the marriage has been dissolved by a decree passed by the

Court. For determining the point involved in this case, it is not necessary to consider the matrimonial relations between the parties though an attempt has been made on behalf of the defendant to show that the suit flat was taken by them as their matrimonial home. Ultimately, the fate of this appeal depends on the question as to who is the owner of the suit flat.

14. From the evidence on record, it is clear that the suit flat was to be purchased for about Rs. 40,000/-. In fact, same was booked by one Navare and he wanted to give resignation and had shown his willingness to sale the same to Plaintiff-wife, after accepting the amount of Rs.11,000/-. Remaining amount that is Rs. 40,000/- minus 11,000/- was to be paid to Dutta Vijay Co-operative Housing Society. It is an admitted fact that on 03/04/1974, Plaintiff and defendant had been to the society's office and on that day two cheques were issued in the name of society, one for Rs. 10,347/- and the other for Rs. 11,550/- and society issued two separate receipts for the same in favour of the Plaintiff-wife. There is no dispute that on that day a cheque of Rs. 11,550/- in society's name was issued by defendant-husband out of his saving bank account. Of course, it is the case of plaintiff-wife

that few days prior to 03/04/1974 both the parties had gone to Pune at the house of Plaintiff's father and Plaintiff had brought money from her father and mother. She had also withdrawn amount from her bank situated at Pune and had collected the money which she had saved while she was in service. The Plaintiff has stated that on 03/04/1974, the earlier owner namely Mr. Navare asked cash amount of Rs. 11,000/-. As it was not possible for Plaintiff to pay such cash amount to Navare and as well as pay amount of Rs. 21,857/- to society, the defendant-husband issued first cheque of Rs. 11,550/- to the society. According to Plaintiff, the said amount was not paid by the defendant as his contribution for purchase price but it was paid only by way of loan or it was only by way of temporary arrangement. We do find that taking advantage of this payment made by the defendant to society, the defendant is now trying to contend that the suit flat is jointly owned by Plaintiff and him. Naturally, the question arises whether it was in fact intention of the parties to purchase the said flat jointly ? Whether it was the intention of the defendant-husband to purchase it as a matrimonial home but only in the name of Plaintiff-wife. It is needless to say that if the parties had an intention to purchase the flat jointly and to have

joint ownership, then normally, they would have purchased said flat in the joint name, unless there was any specific logical reason for the parties not to purchase the same in the joint name. While considering this aspect we can not ignore the fact that both the parties are highly educated. The defendant-husband was holding a very high post in Reserve Bank of India. A feeble attempt has been made by him to give some explanation as to why the suit flat was purchased in the name of wife alone. He has stated that as he was having transferable job, with a view that Plaintiff-wife should be in a position to take part in the working of the society, the suit flat was purchased in her name. However, having regard to other conduct of the defendant-husband and in particular his meticulousness about the accounts and control over expenditure etc., we are not inclined to accept this explanation of the defendant-husband. In fact, if the object of the defendant was to take part in the society's proceedings and to have some voice therein then he would have in fact preferred to purchase the flat in the joint name, so that each one of them would have got the chance to participate in the society's working. So, this is the first circumstance which clearly indicates that it was not the intention of the

defendant-husband to purchase the flat in the name of Plaintiff alone for the purposes of convenience. On the contrary, the subsequent events and correspondence would also indicate that the flat was to be purchased by Plaintiff-wife with her money and with financial assistance of her father. But only due to the reasons mentioned by the Plaintiff, on the first day defendant-husband was required to issue one cheque in the name of society. So, under these circumstances, this payment by itself would definitely not indicate that the property was to be purchased jointly.

15. There is one inland letter at Exh-J. Admittedly, it is written by Plaintiff-wife to her father on 06/04/1978 from Delhi. From the perusal of this letter it is very clear that Plaintiff wanted to purchase suit flat for herself. The reason behind that was to have some shelter of her own, if as a result of strained relations between husband and wife, she is required to reside separately. In this letter, the circumstance under which the defendant-husband was required to issue cheque in the name of society is disclosed. It is also specifically mentioned in this letter that by taking advantage of this payment of Rs. 11,550/-, the defendant-husband would later claim

ownership over the suit flat and as such the Plaintiff-wife had requested her father to repay the said amount to defendant-husband so that he will not be able to claim ownership over the suit flat. It is pertinent to note that in this letter Plaintiff-wife has referred her husband as 'Bhide'. This is also rather strange. It only indicates that though husband and wife were residing together physically, their minds had not come together and there was always apprehension in the mind of Plaintiff-wife about her security. It is Plaintiff's case that as indicated in this letter defendant in fact received amount of Rs. 8550/- from Plaintiff's father. He gave draft of Rs. 5000/- to defendant and Plaintiff's mother gave a draft of Rs. 3500/- to defendant. This payment is in fact admitted by the defendant-husband. However, it is contented that the said amount was not paid to him as repayment of loan of earlier amount of Rs. 11,550/- but the said amount was given by way of gift by the Plaintiff's father to him. Besides the bear word of defendant there is no other convincing evidence to show that the said amount of Rs. 8500/- was paid by the parents of Plaintiff to defendant as gift. In fact, having regard to the strained relations between the parties and the complaints that were made by the Plaintiff to her

parents about the behavior of defendant, it is difficult to believe that Plaintiff's father would give said amount to defendant as gift. On the contrary, the circumstances and prepoderence of probabilities clearly go to show that Plaintiff's father must have paid the said amount with a view to render financial assistance in purchase of flat. In the above mentioned letter Exh-J, the Plaintiff-wife has also stated that defendant has received amount of Rs. 2,970.87/- as she spent the said amount for household expenses. In fact, those amounts have been described as :-

"मी भिडेंच्या घरासाठी केलेल्या खर्चाचा तपशील"

(Details of expenditure incurred for Shri Bhide's house)

There is sufficient evidence on record to show that the defendant-husband was keeping accounts of the expenses made for the house, very meticulously. He used to pay a very small sum to his wife as pocket money or to meet her personal expenses. But what is strange to be noted is that whenever relatives of Plaintiff-wife used to come to their house at Delhi or anywhere else and some amount was required to be spent for such guests, the defendant-husband used to take that amount into consideration while giving pocket amount or personal amount of Plaintiff to her. It has come on

record that when parents of Plaintiff had been to Delhi and stayed their for some time, Plaintiff's father paid amount of Rs. 1500/- to defendant. All these events are important only to note the nature, conduct, behavior as well as attitude of the defendant-husband and to know how the transactions used to be between Plaintiff and defendant. So, when a person was having such meticulous attitude he would definitely not purchase house only in the name of Plaintiff, if really it was intention to purchase the house jointly or the initial amount of Rs. 11,550/- was paid as defendant's contribution towards the purchase price.

16. It is the specific case of the Plaintiff that the amount of Rs. 11,550/- is repaid by her or her father to defendant and as such the defendant-husband has in fact not contributed anything for the purchase of the suit flat. The payment of Rs. 8500/- as well as the amount spent by Plaintiff-wife towards household expenses which the husband was under obligation to pay was to the tune of Rs. 2970.87/-. Thus, defendant-husband certainly received amount of Rs. 11,470/-. It is pertinent to note that in the letter dated 06/04/1978 Exh-J. Plaintiff had informed her father

that he should also pay interest at the rate of Rs. 6% over the said amount of Rs. 11,550/-. But according to defendant no such actual interest is paid. Thus, if we take into consideration the evidence as a whole, then, it does appear that whatever amount was paid by defendant-husband initially under particular circumstances to Dutta Vijay Co-op. Housing Society was not as a co-owner or joint owner and the said amount has been repaid to him and there is in fact no contribution of the defendant towards the consideration of suit flat.

17. It is pertinent to note that the subsequent conduct i.e. conduct of the defendant after 1978 or thereabout or his correspondence with Plaintiff-wife and her father certainly indicates that he has in fact admitted the position that the suit block is of Plaintiff-wife and he has nothing to do with the same. Merely because after the time the said flat was purchased by Plaintiff, defendant as well as defendant's daughter from earlier wife and defendant's mother stayed there for some time, the said house can not be regarded as “Matrimonial Home”. In fact, immediately after the marriage Plaintiff and defendant

stayed together in defendant's block at Goregaon. Suit Flat was in fact purchased for the Plaintiff and that too with a specific intention that if time comes she should have her own shelter. So, the said house was not a matrimonial home as contemplated by the concept of 'matrimonial home' under the Hindu Law. On the contrary, the material on record shows that defendant and his mother and some other relatives were residing therein as result of courtesy of Plaintiff or as a result of permission granted by Plaintiff. There is on record a letter written by defendant to Plaintiff on 31/07/1978 from Delhi, wherein he has mentioned :-

> " तीर्थरुप भाउंनी रुपये 8,800/- ड्राप-ट तयार ठेवला आहे हे समजले पण तो सध्या पाठवू नये मी मुंबईला येईन तेव्हा येईन. ब्लॉक संपूर्ण तुझा झाल्यावर तुम्ही माझ्यापासून काय भाडे घेणार आहात ते लेखी कळवावे."
>
> *(" I understand that Bhau has kept the draft of Rs. 8,800/- ready. However, the same should not be sent at present, when I will came to Mumbai that time I will come. After the time you become full owner of the block, what rent you would recover from me, be informed in*

writing.")

This letter of defendant is sufficient to hold that even the defendant had accepted the position that the block was to be owned by Plaintiff alone and even if the defendant or his other members would have continued in the said flat, he was to pay rent for the same. In our opinion, this statement of defendant in fact gives death blow to defendant's contention that the suit flat is jointly owned by him and Plaintiff.

18. There is another letter written by the defendant and Plaintiff on 20/10/1981 from Delhi wherein he has mentioned :-

> " मुलुंडचा ब्लॉक तुझाच आहे व सध्या इतरांबरोबर त्यात तुही राहतेस याबददल कुणालाही शंका नाही." *(" Mulund Block is yours and at present you are residing their alongwith others nobody has any doubt about the same.")*

So, this is another admission of the defendant-husband wherein he has clearly admitted exclusive ownership of the Plaintiff in respect of the suit block. In fact, in another letter written by the defendant to Plaintiff's father on 14/10/1977 the defendant has mentioned :-

" तेव्हा 6-7 महिन्यात तिचा ब्लॉक खाली करुन दयायच्या किंवा कर्ज काढून तिचे पैसे चुकते करण्याच्या खटपटीत मी आहे."

(I am trying to vacate her block within 6-7 months or to secure loan and clear her money.)(Emphasis is ours)

So, this also indicates that the defendant had accepted that the suit block is of Plaintiff.

19. Much is made about the fact that for a period of about 6-7 years defendant alone was paying the outgoings of the flat (Society maintenance and taxes of the property). Taking advantage of this, it is tried to be contended by the defendant that the block was jointly owned. Had it not been so and it would have been exclusively of the Plaintiff, he would not have paid outgoings. However, the Plaintiff has specifically stated that defendant was paying such outgoings because even after the time he went to Delhi he was not in a position to make any other arrangement for residence of his daughter from his earlier wife and for her mother and as they were residing in the suit flat, the defendant was making payment of outgoings of the block.

There is no reason to disbelieve this version of the Plaintiff-wife. On the contrary, if we see the letter written by defendant to Plaintiff's father from Delhi on 30/05/1981. We find therein he has mentioned :-

> " दिल्लीच्या सर्व सामानासहित मुलुंडला मीनाच्या जागेत सर्वांनी राहण्याचा माझा बेत आहे. सध्या मी देत असलेले भाडे रु 240 (रु 650 रोख व रु 90 सोसायटीचा टॅक्स) मी यापूढेही आम्ही राहू तोपर्यन्त देत राहीन. "
>
> *(It is my plan to reside in Meena's Block at Mulund the rent of Rs. 240/- i.e. being paid by me at present (Rs. 150/- cash and Rs. 90/- society taxes) will be paid by me hereafter till the time we reside in the suit block.)*

20. At Exh-O, there is a letter written by defendant to Plaintiff's father on 10/07/1981. In this letter, he has mentioned :-

> " पुढे 4 वर्षांनी तारीख 30/06/1978 च्या पत्राने तुम्ही तुमचा मानस मुलीला स्वखर्चाने स्वतंत्र जागा देण्याचा आहे असे कळवून माझे पैसे ऑगस्टच्या सुमारास परत केलेत. "
>
> *(Four years thereafter by your letter dated 30/06/1978 you disclosed your*

desire to give independent premises at your cost to your daughter and <u>returned my money in August or thereabout</u>.)

(Emphasis is ours).

So, the above mentioned statement of the defendant also negatives the contentions of the defendant that the amount that was paid by Plaintiff's father to him was by way of gift etc. If really defendant had not received the amount which he had paid initially towards the suit flat, then certainly a person like defendant would not have made above mentioned statement. Thus, having regard to all the facts and circumstances and evidence on record and in particular the clearcut admissions of the defendant we have absolutely no hesitation to hold that learned Trial Judge has rightly held that the suit block is exclusively owned by the Plaintiff-wife. It is not their matrimonial home and defendant is not co-owner of the said block as contended by him. The defendant in unequivocal terms admitted that as and when Plaintiff would ask, he would remove himself from such block. So, it is very clear that when Plaintiff asked the defendant to stop use of premises and withdraw himself from the suit block alongwith his belongings, it was necessary for him to do so. Instead, he took false

contention and tried to submit that he is co-owner of the suit property and as such Plaintiff is not entitled to seek declaration against other co-owner. As pointed out above, the evidence on record shows that the contention of the defendant is not at all correct and the same is not proved by him on the contrary Plaintiff is the exclusive owner of the suit block. Naturally, there is no reason to find fault with the order passed by the learned Trial Judge.

21. There is absolutely no substance in the arguments advanced by plaintiff that the directions given by this Court while transferring the matter to Family Court were not observed by the Family Court. On the contrary, we do find that after giving sufficient opportunity to both parties to lead even additional evidence the Court has decided the matter according to law after having considering the pleadings and evidence in its proper perspective.

22. In view of above, there is no substance in this appeal.

23. Appeal is dismissed with costs.

(S.R. SATHE, J.) ***(S.B. MHASE, J.)***